

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA, <u>ex rel.</u> VEN-A-)
CARE OF THE FLORIDA KEYS, INC., by and)
through its principal officers and directors,)
ZACHARY T. BENTLEY and T. MARK JONES,) Civil Action
Plaintiff,) No. 05-11084-MEL
v.) (Consolidated with certain
DEY, INC.; EM PHARMA, INC.; EMD) claims severed from No. 00-
PHARMACEUTICALS, INC.; LIPHA, S.A.;) 10698-MEL)
MERCK-LIPHA, S.A.; and MERCK KGaA,) FILED IN CAMERA AND
Defendants.) UNDER SEAL

**PLAINTIFF VEN-A-CARE'S MOTION FOR LEAVE TO AMEND COMPLAINT
BY ADOPTING UNITED STATES' COMPLAINT IN INTERVENTION**

On or about August 22, 2006, the United States intervened in this action as to defendants Dey, Inc., Dey L.P., Inc. and Dey, L.P. ("Dey").

Pursuant to 31 U.S.C. § 3730(c)(1), Ven-A-Care has the right to continue as a party to the action against Dey and elects to exercise that right. Accordingly, Ven-A-Care moves, pursuant to Rule 15, Federal Rules of Civil Procedure, for leave to amend its complaint as to Dey by adopting the United States' Intervention Complaint as Ven-A-Care's complaint against Dey and by adding a request to the United States' Intervention Complaint that the Relator receive the maximum share of the proceeds of the action or settlement of the claim provided by law, and reasonable expenses necessarily incurred,

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plus reasonable attorneys' fees and costs.¹ Attached as Exhibit "A" is Ven-A-Care's Complaint Adopting United States' Complaint in Intervention Against Dey, Inc., Dey L.P., Inc., Dey, L.P. and Requesting Additional Relief.

Respectfully submitted,

Attorneys for the Relator
VEN-A-CARE OF THE FLORIDA KEYS, INC.



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¹ The United States filed its Ex Parte Motion to Sever and Transfer Certain Claims Against Defendants Dey, Inc. EM Pharma, Inc., EMD Pharmaceuticals, Inc., Lipha S.A., Merck-Lipha, S.A. and Merck KgaA on August 22, 2006 requesting the Court sever and transfer certain claims in the above captioned action. The Relator expressly does not dismiss its claims against Dey that are subject to the transfer to the District of New Hampshire. As noted in the United States' Motion, the claims against Dey at issue in the transfer were originally severed from Civil Action No. 00-10698.

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EXHIBIT “A”

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MERCK-LIPHA, S.A.; and MERCK KGaA,) FILED IN CAMERA AND
Defendants.) UNDER SEAL

**PLAINTIFF VEN-A-CARE'S COMPLAINT
ADOPTING UNITED STATES' COMPLAINT IN INTERVENTION AGAINST
DEY, INC., DEY L.P., INC. AND DEY, L.P. AND REQUESTING ADDITIONAL RELIEF**

COMES NOW, VEN-A-CARE OF THE FLORIDA KEYS, INC. ("VEN-A-CARE" or "the Relator"), and through the undersigned attorneys on the Relator's own behalf and joins the UNITED STATES' Complaint in Intervention against Dey, Inc., Dey L.P., Inc. and Dey, L.P. ("Dey") and additionally states as follows:

1. Pursuant to 31 U.S.C. § 3730(c)(1), Ven-A-Care has the right to continue as a party to the action against Dey and elects to exercise that right.
2. Ven-A-Care adopts the United States' Intervention Complaint as Ven-A-Care's complaint against Dey and incorporates herein all allegations and requests for relief against Dey as stated by the United States.
3. In addition, the Relator requests that it receive: the maximum share of the proceeds of the action or settlement of the claim provided by law plus reasonable attorneys' fees and costs.

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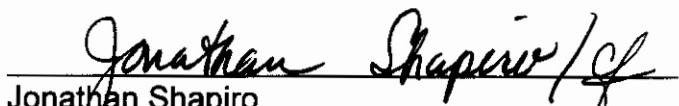
PRAYER FOR RELIEF

WHEREFORE, the Relator demands and prays that judgment be entered in its favor against Dey, Inc., Dey L.P., Inc., and Dey L.P. as stated in the Prayer for Relief asserted by the United States in the United States' Complaint against Dey. Furthermore, Ven-A-Care requests that it receive the maximum share of the proceeds of the action or settlement of the claim provided by law plus reasonable attorneys' fees and costs and any other relief available by law.

DATED this 23 day of August, 2006.

Respectfully submitted,

Attorneys for the Relator
VEN-A-CARE OF THE FLORIDA KEYS, INC.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of August, 2006, a true and correct copy of the foregoing was sent to the United States via email to Laurie Oberembt, Trial Attorney, Room 9226, Patrick Henry Building 601 "D" Street, N.W., Washington, DC 20044, Laurie.Oberembt@usdoj.gov and George B. Henderson, II, Assistant U.S. Attorney, United States Courthouse, 1 Courthouse Way - Suite 9200, Boston, MA 02210, George.Henderson2@usdoj.gov.



JONATHAN SHAPIRO